

# **RULES OF PRACTICE, FORMS and ORDERS**

## **MONTANA FOURTH JUDICIAL DISTRICT Court MISSOULA AND MINERAL COUNTIES**

**April 2003 Revisions are Highlighted in Yellow.**

**July 2004 Revisions are Indicated in Green.**

**November 2005 Revisions are Indicated in Light Blue.**

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## **RULE 1: DEPARTMENTS OF THE DISTRICT COURT**

The District Court of the Fourth Judicial District of the State of Montana is divided into four departments:

**Department No. 1 -- presided over by Judge Edward P. McLean**  
**Department No. 2 -- presided over by Judge John S. Henson**  
**Department No. 3 -- presided over by Judge John W. Larson**  
**Department No. 4 -- presided over by Judge Douglas G. Harkin**

The position of Chief Judge is assumed for a calendar year by the presiding judges in rotating order as follows:

Department 1 – 2006, 2010  
Department 2 - 2007, 2011  
Department 3 - 2008, 2012  
Department 4 - 2005, 2009

The District Court Judges shall meet monthly at a time and place designated by the Chief Judge. Special meetings of the judges may be called by the Chief Judge or any two judges by announcement to all judges at least 24 hours in advance as to time, place and agenda. Decisions of the District Court are made by majority vote of the District Judges.

The position of Youth Court Judge shall be assumed on an annual basis by the Chief Judge of the preceding year.

## **RULE 2: DIVISION OF BUSINESS**

Within Missoula And Mineral counties all matters filed in each docket shall be allocated among the four departments in random numerical rotation. Trials and hearings on contested matters shall be before the judge of the department in which the action is filed.

**The judge assigned to a Law and Motion day in Mineral County** shall hear other departmental matters if they are non-dispositive, i.e., arraignments, withdrawal of pleas, etc. The judge presiding over an action will hear any pre-trial issues and dispositive matters. Any issues that need attention prior to disposition shall be directed to the presiding judge.

Mineral County law and motion days are set out below for each judge.

JANUARY, MARCH, MAY, JULY, SEPTEMBER, NOVEMBER

Dept. No. 1 - Every second Wednesday of the month

Dept. No. 2 - Every fourth Wednesday of the month

FEBRUARY, APRIL, JUNE, AUGUST, OCTOBER, DECEMBER

Dept. No. 3 - Every second Wednesday of the month

Dept. No. 4 - Every fourth Wednesday of the month

### **RULE 3: FILING OF PLEADINGS, DEPOSITION, BRIEFS, NOTES OF ISSUE ETC.**

A. **Civil Rules Applicable:** Any pleading filed in any civil action which does not conform to Rule 10 or 11 of the Montana Rules of Civil Procedure may be stricken by the Court on its own initiative.

B. **Form of Papers Presented for Filing:** Any pleading filed in any action which does not conform to Rule 1 of the Montana Uniform District Court Rules shall not be filed by the Clerk and shall be returned to the party submitting it.

C. **Department Identification Number:** A document, other than the document that initiates a case, may not be filed with the clerk of Court unless it contains an identification of the department that has jurisdiction of the case. The department number shall be placed directly above the cause number.

D. **Necessary Copies Presented:** Parties must furnish to the clerk all necessary copies of any pleading, prepared order or other matter filed of record in any cause, so as to enable the clerk to provide conformed copies.

#### **E. Requirements of Briefs.**

(1) No individual brief shall exceed twenty (20) pages in length, exclusive of indexes and appendices, without prior leave of the Court.

(2) In a prefatory statement in each motion submitted to the Court, the moving party shall certify that the other parties have been contacted concerning the motion, and whether the other parties object to the motion.

(3) All motions requesting orders to require participation in depositions of proceedings in foreign jurisdictions shall certify that the other parties and deponents have been contacted, whether they object to the request, and whether a date and location for the deposition has been mutually agreed upon

(4) Either a proportionately spaced typeface of 14 points or more, or a monospaced typeface of no more than 10.5 characters per inch may be used in a brief, petition, motion or other paper. A proportionately spaced typeface has characters with different widths. A monospaced typeface has characters with the same advanced width. Text shall be in Arial or a comparable, sans serif font. Case names, headings and signals may be underlined or in italics or bold.

F. **When Leave of Court Required:** When leave of Court is required before a pleading can be filed, a proper motion must be filed and served. An original of the pleading should be attached (to be removed and stamped for filing immediately upon granting of the motion).

G. **Preparation of Order for Judge's Signature.** Where an uncontested motion is presented the Court, an Order for the Judge's signature shall accompany it. All Orders (uncontested or not) shall accompany the motion as a separate document.

H. **Depositions and Briefs:** Trial briefs will not be filed by the clerk as permanent Court records except upon order of the Court, in which event the clerk shall receive such documents, so note in the Register of Actions, and then place them in the Court file. Thirty days after a final judgment has issued, where the time for appeal has expired or the questions on appeal are finally resolved, the clerk will notify counsel that all discovery material and briefs will be removed from the Court files and destroyed unless such materials are retrieved by counsel within thirty days of the date of this notice. Trial briefs must be served upon opposing counsel.

I. **Notes of Issue:** In any civil, divorce or invalidity actions, when the parties are fully joined, counsel shall prepare and present to the clerk of court a Note of Issue.

## **RULE 4: COURT RECORDS**

A. **Withdrawal of Files or Papers.** The clerk shall not permit any files or documents to be removed from the office except upon order of the Court for good cause shown. The clerk must obtain a receipt from any party removing any file or Court record.

B. **Juvenile (Delinquent Youth and Youths In Need of Care), Adoption and Sealed Matters.** The records and files in juvenile and adoption actions and sealed files shall not be withdrawn, examined, or inspected by anyone except upon order of the Court.

C. **Withdrawal Prohibited.** No will, bond, or undertaking shall be taken from the clerk's office under any circumstances, and no judgment before it is recorded.

D. **Exhibits.** Exhibits offered during a trial may be withdrawn at any time after

trial upon stipulation of counsel. After a judgment has become final and appeal rights no longer exist, any party may withdraw any exhibit which that person has offered into evidence, unless some person has theretofore filed with the clerk notice that said third person is entitled to the exhibit. Withdrawal shall then be permitted only on order of the Court.

If exhibits are not withdrawn within thirty days after the judgment has become final, the clerk shall give ten days notice to the party offering the exhibit of his/her intention to dispose of the same and may do so, if not then withdrawn, after obtaining a Court order to destroy the exhibit.

## **RULE 5: LAW AND MOTION**

- A. **Missoula County Law and Motion Days.** The law and motion days in each department are as follows:

Department 1 - Thursday  
Department 2 - Tuesday  
Department 3 - Thursday  
Department 4 - Tuesday

Court shall convene on law and motion days at 8:30 or 9:00 a.m. When law and motion day falls on an official holiday the law and motion calendar shall be continued to the next regular law and motion day of the judge.

B. **What Matters May Be Heard on Law and Motion Days.** All uncontested matters, judgments by default, probate proceedings, uncontested *ex parte* matters, and other matters pertaining to questions of law not involving contested questions of fact shall be heard on law and motion day, except as otherwise ordered by the Court for good cause shown. Contested matters involving questions of fact will not be heard on a law and motion day without express approval of the Court but will be set as to day and time by order of Court as set forth in this rule. Motions for summary judgment may be heard on law and motion days provided they do not exceed the time limits set forth in paragraph D.

C. **Scheduling of Law and Motion Matters.** Matters may be placed on the law and motion calendar only upon written request to the scheduling clerk at least 24 hours in advance of the hearing date. The written request shall:

- (1) what issue the requesting party is requesting to be heard;
- (2) include an estimate of the amount of time required by each party; and
- (3) the number of witnesses to be called by each party.

([Exhibit "F"](#) "Request for Hearing.") Any matter anticipated to exceed a TOTAL hearing time of one (1) hour shall not be scheduled on the Law and Motion calendar.

Schedules for each department are attached as:

Department 1 - Thursday

[Exhibit "G"](#)

Department 2 - Tuesday

[Exhibit "H"](#)

Department 3 - Thursday

[Exhibit "I"](#)

Department 4 - Tuesday

[Exhibit "J"](#)

D. **Contested Matters Shall Be Postponed.** Any matter set for the law and motion calendar which proves to involve contested issues of fact shall be subject to postponement to be set on the contested calendar. Any matter that the parties reasonably anticipate will take more than one hour to complete shall not be scheduled on the law and motion calendar but shall, instead, be scheduled as a contested hearing as set forth in Rule 6.

E. **Limitations.** No matter may be set on the law and motion calendar until the motion or other documentation and all relevant supporting documents have been filed with the clerk. A proposed order, decree, or judgment may be presented to the Court at or before the time the matter is to be heard.

F. **Reminders to the Court.** If a judge has any matter under advisement for more than 30 days, each party affected thereby shall send to the judge a letter, with copies to all counsel, describing the matter under advisement and stating the date it was taken under advisement.

G. Any department may issue special orders modifying the law and motion schedules as it relates to that department.

## **RULE 6: CONTESTED HEARINGS**

A. **Disposition of Motions.** All motions shall be disposed of pursuant to Rule 2 of the Uniform District Court Rules, or as otherwise required by the Montana Rules of Civil Procedure. When all briefs have been filed, or the time for filing of briefs has expired, either party may file a "Notice of Issue" with the Court indicating that the matter is ready for ruling by the Court.

B. **Requests for Oral Argument.** When counsel desire oral argument on a motion, other than a motion in which oral arguments shall be deemed mandatory unless waived by all parties, counsel shall state with their Notice of Issue or in a separate request for oral argument their reasons in support of oral argument and why the written briefs are



inadequate to fully and satisfactorily articulate their position. Oral argument will be set only by Court order, whether upon motion of a party or upon a *sua sponte* determination that oral argument would be beneficial. If a motion for oral argument is not ruled upon within 30 days of its submission, the motion shall be deemed denied.

C. **Scheduling Oral Argument.** When oral argument is granted, the moving party must prepare a Request for Hearing for the Court's Law and Motion day. The requested hearing shall not be longer than one hour without express permission of the Court. The parties should expect the Court to enforce the time limits stated by the parties at the time of scheduling of the hearing.

In the event any contested matter set for hearing is resolved between the parties, the scheduling clerk shall be immediately advised so that other matters may be scheduled in the time previously allotted for that case. Failure to abide by this provision may result in imposition of sanctions by the Court.

D. **Contested Hearings.** Any motion requiring presentation of testimony shall be scheduled as a contested matter with the appropriate Request for Hearing pleading being presented to the Court's scheduling clerk.

## **RULE 7: TIME LIMITS**

In any hearing, contested or uncontested, or in any show cause hearing, injunction hearing or trial of any case, the Court may direct the parties to state the amount of time their case will take to present. The Court may then impose time limits on the presentation by each party, and retains the discretion to allot a lesser time than that requested by each party. In the event time limits are imposed, the Court has full authority and discretion to enforce those limits.

## **RULE 8: SCHEDULING ORDERS**

A. **Scheduling Orders.** Upon filing of an appearance by one or more defendants, the judge to whom the case is assigned shall direct the mailing of a scheduling order to the parties or their attorneys of record. The scheduling order shall direct that the deadline for filing of the pretrial order shall be seven months from the date of filing of an appearance, unless extended upon motion and order of the judge. (See [Exhibit "B"](#) and [Exhibit "C"](#) for a sample of the Scheduling Order. Exact formats may vary from department to department.)

The scheduling order form shall provide dates to be filled in by attorneys of record for the following:

- (1) joinder of parties and amendments to pleadings;
- (2) date by which all pretrial motions will be filed and heard;
- (3) identification of expert witnesses;
- (4) close of discovery;
- (5) date by which the lawyers resolution conference will be held;
- (6) filing of a proposed Pretrial Order;
- (7) date for a master-supervised settlement conference pursuant to Rule 9 of the Local Rules; or
- (8) such additional matters as the Court or parties deem necessary.

The lawyers resolution conference referred to in (5) above shall be held in person between counsel for all parties at a place mutually agreeable to the parties. If the parties cannot agree, the Court will direct the place and manner of the conference. Within ten days after the conference, counsel for plaintiff shall submit to the Court a certification that the lawyers resolution conference was held and shall advise whether or not the case was settled.

The dates in the scheduling order shall not be changed absent Court order upon a showing of good cause.

MOTIONS FOR CONTINUANCE FOR DATES 90 DAYS BEYOND THE ORIGINAL SCHEDULING DATE IN ANY SCHEDULING ORDER SHALL BE SUBMITTED IN WRITING, SUPPORTED BY AFFIDAVIT, AND SHALL BEAR THE SIGNATURES OF ALL THE PARTIES.

The Order ([Exhibit "A"](#)) directing filing of a Scheduling Order ([Exhibit "B"](#)) shall advise the parties that failure to submit an agreed-upon scheduling order shall result in the Court issuing a scheduling order *sua sponte* which will be substantially as set forth in [Exhibit "C"](#).

Unless otherwise ordered by the Court, the time set for filing the pretrial order shall be after pretrial motions have been filed but before the master-supervised settlement conference is held pursuant to Rule 9 of these rules. This will allow pretrial motions to be ruled upon prior to the holding of the master-supervised settlement conference.

B. **Exemptions.** Pursuant to Rule 16(b), M.R.Civ.P., the following matters are exempt from the discovery procedure required by this Rule unless such a case becomes a contested case:

- (1) juvenile cases;
- (2) URESA actions;
- (3) dependent and neglect cases;
- (4) abstracts and transcript of judgment;

- (5) adoptions;
- (6) sanity;
- (7) probates;
- (8) criminal cases (included to eliminate the possibility of confusion);
- (9) small claims appeals;
- (10) administrative appeals
- (11) seizures and forfeitures;
- (12) habeas corpus;
- (13) name changes; and
- (14) conservatorships and guardianships.

Discovery in the above matters shall proceed according to orders issued in each case.

## **RULE 9: SETTLEMENT CONFERENCES**

A. **Settlement Conferences Required.** In each civil case, there will be two settlement conferences, the holding of which will be required before a case may be set for trial. The first is a lawyers resolution conference and the second is a master-supervised settlement conference, both of which are provided for in the Scheduling Order prepared and issued in accordance with Rule 8 of the Local Rules. ([Exhibit "B"](#) and [Exhibit "C"](#).)

B. **Settlement Conference Coordinator.** The District Judges have designated a coordinator for master-supervised settlement conferences. The coordinator is responsible for developing and maintaining a list of Court-approved settlement masters and shall be the contact person and coordinator for assignment of settlement masters and scheduling of master-supervised settlement conferences.

C. **Master-Supervised Settlement Conference.** The master-supervised settlement conference may be held at any time upon stipulation of the parties or order of the Court. Unless otherwise agreed, the conference shall be held after submission of the pretrial order. The Court shall issue a separate order governing the scheduling of the master-supervised settlement conference, the choosing of the settlement master and payment therefor. ([Exhibit "D"](#)) Fees are waived when the Court has approved an Affidavit of Inability to Pay Filing Fees.

Counsel who will try the case and all parties must attend in person. Out-of-area corporations or insurance companies must have a representative present in person or via speaker phone, unless personal attendance is ordered by the Court upon a showing of good cause. All participants must have requisite settlement authority. The parties shall agree upon responsibility for payment of the fees charged by the settlement master.

D. **Report of the Settlement Master.**

**Cases Settled:** Upon completion of the master-supervised settlement conference, the settlement master shall immediately contact the Judge's secretary to advise that the case has settled so that any action on court hearings or pending motions can be halted. The settlement master shall submit, on a form provided by the Court ([Exhibit "E"](#)), a report of the conference and its settlement results. The report shall be filed with copies to the judge, all counsel of record and any parties not represented by counsel.

**Cases Not Settled:** Within five days of the completion of the master-supervised settlement conference, the settlement master shall submit, on a form provided by the Court a report of the conference and its result. The report shall be filed with copies to the judge, all counsel of record and any parties not represented by counsel. In the event that the case is not settled, the form shall also state the following information obtained from counsel for the parties:

- (1) the length of time anticipated to be necessary for trial;
- (2) dates counsel or key witnesses are legitimately unavailable for trial;
- (3) any special requests or needs regarding trial.
- (4) costs of settlement master shall be included in the final judgment, however, the settlement master should be paid 50% by each party at the time of the settlement conference.

Costs of settlement master shall be included in the final judgment; however, the settlement master should be paid 50% by each party at the time of the settlement conference.

Cases will be set for trial upon submission of the settlement master's report. No case will be set for trial without a master-supervised settlement conference unless specifically provided by Court order upon motion and showing of good cause.

**E. Proceedings Confidential.** No person present at a settlement conference, including the settlement master, shall be subject to examination concerning statements made by any person at the settlement conference. The parties will not subpoena or otherwise require the settlement master to testify regarding the settlement conference or the settlement master's opinions regarding the case.

## **RULE 10: TRIALS AND TRIAL SETTINGS**

**A. Trial Dates.** Trial dates shall be set by the scheduling clerk designated by each department upon submission of the report of the settlement master. All trials shall be assigned a date certain but may share that date with up to three other cases, each being

assigned a first, second, third or fourth setting on the date certain. When submitting the pretrial order, counsel shall state in a cover letter any special requests regarding the trial setting, including dates that the parties or key witnesses are legitimately unavailable for trial, and the estimated length of trial. In addition, the report of the settlement master will state the estimated length of trial and dates key witnesses and parties are legitimately unavailable for trial.

**B. Settlement Conference Mandatory.** No case may be tried unless it has been through a lawyers resolution conference and master-supervised settlement conference as required by these rules. This requirement may be waived only upon motion and order of the Court.

**C. Trial Schedules.** Jury and non-jury trials shall be scheduled by the Court throughout the year as time is available.

**D. Advising the Court of Settlement is Mandatory.** When a case set for trial is settled, the parties must immediately advise the Court or scheduling clerk of that fact. Failure to do so may result in imposition of sanctions. In addition, the Court may impose monetary sanctions sufficient to reimburse the clerk of Court for any expenditures incurred by the clerk of Court if a jury trial is settled or continued within 72 hours of its scheduled time.

**E. Findings of Fact and Conclusions of Law.** Proposed findings of fact and conclusions of law shall be submitted when required in a format for signature by the Court, together with a copy for the Court. A transmittal sheet shall accompany the findings indicating the party submitting the findings and that the findings were served upon all parties. Where possible, a 3 1/2 inch computer disk or CD compatible with Microsoft Word or in Rich Text Format (.RTF) shall accompany the findings.

**F. Trial Briefs.** Trial briefs must be served upon opposing counsel no less than five days before commencement of trial. Trial briefs will not be filed as permanent Court records except by order of the Court, in which event the clerk shall file and docket the trial briefs as with any other pleading and then place them in the Court file. Thirty days after a final judgment has been issued, where the time for appeal has expired or the questions on appeal are finally resolved, the clerk will notify counsel that all discovery materials and trial briefs will be removed from the Court files and destroyed unless retrieved by counsel within thirty days of the date of the notice.

**G(1) Electronic Courtroom.** To facilitate greater efficiency and enhance the juries' ability to view exhibits contemporaneously, the Court has implemented an electronic trial system. The Court may require parties to use the electronic courtroom for a trial, particularly where a large number of exhibits will be presented, or where audiovisual exhibits or demonstrations are to be shown. Counsel may also request trial in the electronic courtroom. Counsel shall contact the Court Administrator for a demonstration to

familiarize themselves with the electronic courtroom's operation well in advance of trial.

(2) **Video Conferencing.** All courtrooms are video-conferencing capable. We are able to connect with many district courts across the state. Additionally, we are often able to video conference with other sites within Montana and out of state. A scheduled hearing in which video conferencing is employed is generally at no cost to the parties. This includes hearings in other venues where counsel has been given leave to appear via the video system. The system may also be reserved for depositions or other matters at a reasonable cost. For all matters in which a judge of the Fourth District is not presiding, parties must contact the Court Administrator to check for courtroom and video system availability.

H. **Jury Panels.** The District Judges shall, at least thirty days prior to the commencement of the jury term, draw a panel of jurors to be used by all judges. The clerk shall inform the judges when a panel is required. The normal jury term is September through September. The clerk shall, upon a juror's service on a trial, remove that juror's name from the panel (unless requested to by the juror to serve on more panels). Any juror who comes in for selection of a case and who is not called to serve on the trial, shall have their name put back into the panel for further selection.

I. **Jury Instructions.** Proposed jury instructions in a civil case shall be presented to the Court and served upon each adverse party within five days prior to the trial set by the Court. The original and one copy of each instruction proposed must be furnished to the Court, along with a 3½ inch disk or CD of the instructions in Word or Rich-Text Format (.RTF). The copies submitted to the Court shall be numbered consecutively, specify the party on whose behalf they are requested, and include a citation of authority supporting the statement of law therein. The original shall be "clean," i.e., bear no citation. The Court may receive additional proposed instructions relating to questions arising during the trial at any time prior to completion of settlement of jury instructions. Proposed forms of verdict must be submitted by each party at the same time and in the same manner as jury instructions.

J. **Six Person Juries.** Pursuant to § 3-15-106, MCA, in all civil actions where the relief sought in the Complaint is under the sum of \$10,000.00, the trial jury shall consist of six persons. The parties may stipulate to six-person juries in other civil cases.

K. **Voir Dire Examination.** Voir dire examination in civil cases shall be limited to one hour on each side unless additional time is requested before trial. Only one attorney for each party shall be allowed to question the prospective jurors on voir dire.

The only proper purpose of voir dire of jurors is to select a panel who will fairly and impartially hear the evidence presented and render a just verdict and to determine the grounds for any challenge for cause therefor:

Counsel will not:

- (1) Ask any questions of an individual juror that are susceptible of being asked collectively.
- (2) Ask questions covered by and answered in juror questionnaire, except to explore some questionnaire answer in greater depth.
- (3) Repeat questions asked and answered, even though asked by opposing counsel.
- (4) Use voir dire for the purpose of attempting to instruct the jury on the law. That is the Court's function.
- (5) Use voir dire for the purpose of arguing the case.
- (6) Ask a juror what his or her verdict might be under any hypothetical situation based on any expected evidence or otherwise.

Upon failure of counsel to abide by this rule, the Court may assume voir dire of the jury. In such case, the Court may require counsel to submit in writing specific questions to be asked by the Court.

## **RULE 11: CRIMINAL ACTIONS**

A. **Use of Forms.** An Acknowledgment of Rights form shall be presented to the Court by defense counsel at the time of arraignment. A Plea of Guilty and Waiver of Rights form shall be presented to the Court by defense counsel at the time of a guilty plea. The Court shall prepare and make available through the clerk of Court the approved forms. Forms for Plea Agreements may also be prepared and made available.

B. **Omnibus Hearings; Use of Stipulations.** Omnibus hearings or a case schedule submitted on an Omnibus form shall be ordered by the Court after entry of a not guilty plea. Prior to the time set for omnibus hearings, counsel for the prosecution and defense shall meet privately and attempt to stipulate to a Court-approved omnibus form which shall be submitted for final approval by the Court prior to the date of the omnibus hearing. Upon approval of the omnibus form, that hearing shall be vacated and trial date set by the Court together with any appropriate deadlines.

C. **Plea Bargain Negotiations.**

- (1) Before the date of the omnibus hearing or other joint conference with the

Court, the prosecutor and defense counsel must enter into plea negotiations. The Omnibus check sheet shall include a declaration that the parties have discussed a possible plea agreement.

- (2) Each department shall schedule pre-trial/status conference and trial date in an effort to avoid conflict, showing preference for incarcerated defendants.
- (3) Each department may prepare a trial calendar before the first trial date. Within ten days of publication of the trial calendar in any department, the prosecutor and the defense counsel shall enter into good faith plea bargaining negotiations in each case not yet resolved. By the 10th day, the parties in each case must:
  - a) request that the case be set on the calendar for change of plea; or
  - b) file a motion to continue over term and a waiver of speedy trial; or
  - c) file a Request for Calling of Jury which will notify the Court that no plea bargained resolution is contemplated; or
  - d) if a specific trial date is established by the Court other pretrial deadlines may be established.

**D. Judgment To Include Imposition of Costs of Prosecution.**

Pursuant to §46-18-232 and §25-10-201(9), MCA, which allows as costs reasonable and necessary expenses as are taxable according to the course and practice of the Court; and it being the practice in this district to allow reasonable costs of prosecution, the judgment in every criminal case, unless otherwise ordered by the Court, shall provide that a convicted defendant shall pay as the cost of prosecution:

- (1) \$100.00 (or the current amount set) in each case which includes a felony charge;
- (2) \$50.00 (or the current amount set) in each case in which only a misdemeanor is charged; or, in the case where the defendant has been convicted of issuing bad checks: the sum of the greater of \$10.00 per check or 10% of the value of any check written by the defendant.

E. In the efficient administration of justice, the judges of the Fourth Judicial District direct the county attorney's office, when filing a new criminal case, to bring to the attention of the clerk of Court any Cause Numbers or active judgments filed previously for that particular Defendant. The clerk of Court shall also cross check for names when filing a new criminal file, bringing to the attention of the judge in jurisdiction for the new criminal



case filing all files related to that Defendant so, as far as is practically feasible, one judge may preside over that particular Defendant.

**F. Judges to Include Costs of Incarceration. (See statute.)**

**G. Appointment of Counsel for Indigent Defendants.**

The eligibility of every defendant to request Court-appointed counsel or the public defender must be determined in accordance with §46-8-111, MCA.

When it is deemed necessary by the Court that a defendant is unable to pay for counsel, the Court will appoint counsel to represent the defendant in the following order of priority:

- (1) where available, a public defender employed by or contracted for by the county;
- (2) a list of attorneys who have indicated a willingness to accept such appointment;
- (3) a list of members of the Bar in the county.

Attorneys, other than those employed or contracted as public defenders, appointed by the Court to represent indigent defendants or other persons unable to provide for their own counsel shall be compensated at a rate not to exceed the current public defender rate. Such attorney shall also be reimbursed for expenses reasonably incurred in such representation, but such expenses shall not include any general office overhead. Larger expenses shall be incurred only after authorization of the Court.

- (1) the compensation to be paid shall not exceed the current amount set for each attorney in a case in which one or more felonies are charged or the current amount set for each attorney in a case in which only misdemeanors are charged;
- (2) for representation of a defendant in an appellate Court additional compensation not to exceed the current amount set may be allowed;
- (3) for representation in connection with post-trial motions made after entry of judgment, or in a probation revocation proceeding, the compensation to be paid shall not exceed the current amount set.

The above maximums may be departed from upon approval of a judge for good cause shown.

In the event of a conviction of a defendant represented by Court appointed counsel or the public defender, the officer who prepares the pre-sentence report shall include in his recommendation to the Court:

- (1) a statement concerning the present or future ability of the defendant to pay costs of his or her defense counsel;
- (2) that this statement is based on the defendant's financial resources and the nature of the burden that payment of costs will impose;
- (3) a statement of the opinion of defense counsel as to an estimate of the costs in the case; and
- (4) the amount and method of payment of the costs.

In the event there is no pre-sentence report, the prosecutor shall present the above recommendations to the Court.

The sentencing Court will evaluate the ability of the defendant to pay the costs of defense counsel in light of the above recommendation. If the defendant is ordered to pay such costs, all payments shall be made to the Clerk of the District Court, who shall reimburse the payments to the county as provided in §46-8-114, MCA.

In the event of non-payment of costs, the county attorney shall move the Court to issue an order to show cause as provided in §46-8-115, MCA.

There is a condition that costs to be paid can only be recommended to the Court when the defendant has been properly advised at the initial appearance that he or she maybe required to reimburse the County for costs of his or her counsel.

## **RULE 12: DOMESTIC ACTIONS**

**A. Parenting Orientation Program.** Pursuant to §40-4-226, MCA, the Judges of the Fourth Judicial District have determined that it is in the best interests of the minor child(ren) that parties involved in a dissolution of marriage or parenting plan amendment (including child support and other actions) attend a Parenting Plan Orientation program. This program is a free service of the Court and is mandatory for both parents. ([Exhibit "N"](#))

**B. Modification of Decree.** Hearing on a modification of a decree of dissolution shall be held before the judge of the department who heard the dissolution action and signed the decree.

**C. Execution for Support Payments.** The clerk of Court shall not issue any execution for support or alimony payments due under any decree of dissolution unless supported by affidavit affirmatively showing the parties have not entered into any

arrangements not contemplated by the decree of dissolution, that they are not living together, and that the payments are delinquent. Details of the delinquency must be specifically set forth.

**D. Custody Evaluations, Guardian Ad Litem.** Fees for professional services ordered by the Court shall be equitably apportioned. The bench and bar will endeavor to establish procedures and guidelines to ensure that all parties and children, regardless of wealth, receive necessary services, evaluations and representation in dissolution proceedings.

**E. Assumption of Cases Involving Families and Children by One Department.** In order to better serve the needs of families and children as well as efficient administration of justice, the judges of the Fourth Judicial District direct that cases involving families/children and/or conservators/guardianships be consolidated so that one judge be in jurisdiction of all related civil and criminal proceedings. Some examples of cases which would be consolidated pursuant to this Rule are:

- (1) conservatorship civil proceeding
- (2) civil commitment proceeding
- (3) juvenile proceeding
- (4) criminal cases involving domestic violence or other violence which affects or impacts the child directly
- (5) abuse/neglect cases and adoptions
- (6) dissolutions

In those instances where related cases have been filed in different departments, the cases shall be assumed by the Court in jurisdiction which has the lowest number, but remain separate causes for filing of the pleadings. Such assumption by one department will insure consistent and fully informed decisions concerning families.

**F. Child Visitation Guidelines.** The District Court has adopted Montana Fourth Judicial District Child Visitation Guidelines, attached hereto as [Exhibit "K"](#).

## **RULE 13: PROBATE AND ADOPTION MATTERS**

### **A. Adoption Investigation.**

In all adoption matters the investigation required by §40-8-122(1), MCA (1985) will be ordered by the Court. It is the obligation of counsel to present to the Court an order for such an investigation. The investigation will then be considered for waiver by the Court of the Department of Social and Rehabilitative Services if the petitioner is a step-parent or a member of the child's extended family. Whenever the Court signs an order for such an investigation by the State Department of Social and Rehabilitative Services, it shall be the duty of counsel to mail or deliver a conformed copy of the Petition for Adoption and the

Order for Investigation to:

State Department of Social and  
Rehabilitative Services  
1018 Burlington Ave.  
Missoula, Montana 59801

B. **Payment of Fees.** The amount and payment of administrator, personal representative, conservator, guardian and attorneys' fees shall be governed by the Montana Uniform Probate Code, as amended from time to time.

C. **Petition for Probate of Will.** Whenever a petition for the probate of a Will is filed, a copy of the Will shall be attached. The original must be filed with the clerk. The Personal Representative shall either (a) file the certificate required by §72-3-1006 or (b) file a declaration, either separately or in the Petition for Distribution, stating that the filing of a federal estate tax return was not required in the estate.

## **RULE 14: WITNESSES**

A. **Examination Limited.** On the examination of witnesses, only one attorney upon each side will be permitted to examine or cross examine the same witness, except by permission of the Court first asked and obtained.

If the attorney of either party offers himself as a witness in behalf of his client, and gives evidence on the merits of the trial, he shall not argue the case to the jury, except by permission of the Court.

B. **Discharge of a Witness.** A party having a witness subpoenaed in a civil cause may discharge the witness by motion made in open Court. If an adverse party desires such witness to remain, the adverse party must procure the witness's further attendance by subpoena or order of the Court, and shall thereafter be responsible to the witness for the fees.

## **RULE 15: STIPULATIONS**

No agreement or consent between the parties, or their attorneys, shall be accepted by the Court unless made in open Court, and taken down by the Court reporter or entered in the minutes by the clerk, or unless the same shall be in writing, signed by the party against whom the same may be urged, or by that party's attorney. It shall be the duty of the party relying upon such minute entry to see that the same is duly entered.

## **RULE 16: CASH BAIL AND BAIL BONDS**

A. Whenever cash bail is delivered to any clerk of court, justice of the peace, or municipal judge, the cash must, as soon as possible, be deposited in a special account with some financial institution where checks, warrants, or drafts can be drawn on the account for the transfer of funds.

B. Whenever bail has been set by and furnished to a justice of the peace or municipal judge and the cause in which the bail was furnished is being transferred to the District Court, the following must be followed:

At the time the papers transferring the case to the District Court are filed with the clerk of the court, the bail must also be delivered to the clerk. The amount and nature of the bail furnished must be endorsed upon the order whereby the justice or judge transfers the cause to the District Court.

- (1) If the bail furnished was cash bail, the justice or municipal judge must deposit a proper check, warrant or draft for the full amount of the bail. Upon receipt of the check, warrant or draft, the clerk of the Court must issue a trust fund receipt and deliver it to the justice of the peace or municipal judge.
- (2) If the bail furnished was a bail bond or other bail as permitted by § 46-9-401, MCA, the justice of the peace or municipal judge must deliver the actual documents furnished as bail to the clerk of the district Court. Upon deposit of such bail, the clerk must issue a receipt specifying the documents received.

C. Whenever bail has been set by and furnished to a justice of the peace in an action wherein the district Court has original trial jurisdiction, and the county attorney elects to proceed in district Court by filing a motion for leave to file an information direct, the following procedure must be complied with:

- (1) The county attorney must, contemporaneously with the filing of the motion in district Court, file a written request with the justice of the peace asking that the bail be transferred to the district Court;
- (2) The county attorney must deliver to the justice of the peace a duplicate copy of such request;
- (3) The justice of the peace must forthwith endorse upon the original request and the duplicate copy the proper information regarding the nature of the bail, and must forthwith transfer the bail to the district Court as provided in (1) or (2) above. The duplicate copy of the request must be filed with the clerk of district Court.

- (4) Prior to release of any bail or bond, the original receipt must be presented with appropriate identification. The funds will then be released to the posting party only, unless otherwise directed by the Court. Cash bonds posted by a defendant may be applied (or at least a portion) to restitution, fines and fees prior to release.

## **RULE 17: PRIORITY RANKING OF PAYMENT OF FINES AND FEES**

Unless otherwise specifically ordered by a judge in a judgment regarding punishments imposed on a convicted criminal defendant, the clerk of Court in each county in the Fourth Judicial District shall establish separate accounts for all categories of payment ordered by the judge and distribute payments received from the defendant to these accounts in the following priority order:

- (1) Restitution (if ordered)
- (2) County Attorney Longevity Pay Surcharge
- (3) Recoupment - Including:
  - (a) Repayment of Cost of Prosecution
  - (b) Repayment of Cost of Public Defense Attorney
  - (c) Repayment of Cost of Calling a Jury
  - (d) Repayment of Extradition Charges
  - (e) Medical Expenses During Incarceration
  - (f) Costs of Incarceration
- (4) Drug Fund
- (5) Fine
- (6) Other fees and charges

Unless specifically waived by a judge, each defendant will be informed in writing by the office of the county attorney of the amount of the county attorney longevity pay surcharge to be paid by the defendant.

## **RULE 18: OUTSIDE JUDGE**

When an out-of-county judge will be presiding in any trial, or any hearing or motion therein, civil or criminal, it shall be the duty of counsel to make arrangements (file notice) with the local clerk in charge of outside judges for any personnel or facilities necessary for the orderly disposition of the proceeding.

## **RULE 19: ABSENCE OR DISABILITY OF JUDGE**

The work of the district shall be interchangeable between the judges thereof during the absence or disability of any of them or upon the request of any judge. During the absence of any judge, the judges present and presiding, or any of them, may enter orders and made disposition, temporary or final, of any case or matter pending before the absent judge. However, when any order is made for a hearing to be had thereafter, the judge present and presiding shall make the order returnable before the judge to whom it is assigned. Thereafter, it shall be the duty of counsel to consult with the assigned judge to either confirm or reset the hearing date fixed.

## **RULE 20: NON-RESIDENT ATTORNEY**

An attorney seeking to be admitted to practice before this Court on a particular case, who is not admitted to the Bar of Montana, and who is authorized to practice law in the highest Courts of another State, must at the time of his/her first appearance in a District Court in Montana, or within ten days thereafter, and before any further proceedings are had in the matter, join with, of record, an attorney who is admitted to practice in Montana and who is a resident of Montana. All admissions *pro hac vice* shall be recorded by the Clerk of Court in the action in which the non-resident attorney is appearing.

## **RULE 21: ATTORNEYS**

A. **Authority as Attorney.** In case of a dispute over the authority of an attorney to represent a party to a proceeding pending before the Court, the Court will not recognize the right of the attorney to appear in such proceedings unless he has written authority from his client or unless the party has personally signed the pleadings filed by the attorney.

B. **Withdrawal by Attorney.** Except as provided in Rule 21D hereof, no attorneys may withdraw from any case, civil or criminal, except by consent of the client and/or by leave of Court after notice has been served on the parties and opposing counsel. This provision is subject to §§37-61-403 through 37-61-405, MCA, and Uniform District Court Rule 10.

C. **Attorney Fees.** In all civil cases, contested or uncontested, where attorney's fees are requested in the pleadings, there must be competent evidence submitted to the Court from which the Court can determine reasonable attorney fees for the services rendered. The party seeking an award of attorney fees shall file and serve upon opposing counsel an affidavit itemizing the claim. The opposing party shall within ten (10) days thereafter file objections and a request for a hearing thereon. Failure to file such an objection and request shall be deemed a waiver of the right to a hearing on

fees. In a contested proceeding, receipt of evidence pertaining to attorney's fees shall be deferred until a final decision or order on the merits of the case has been issued by the Court.

D. **Release of Counsel of Record on Notice.** When a final disposition has been made of any case and the time for appeal has expired, all counsel of record shall be automatically relieved of their duties as counsel of record provided they first file a notice of termination with the Clerk of Court and serve the same on opposing counsel and their client. Thereafter if any further proceedings are filed therein, notice must be served on the adverse party as provided in Rule 4(D), Montana Rules of Civil Procedure.

## **RULE 22: DISMISSAL OF ACTION FOR LACHES**

The Clerk of Court will, on a quarterly basis, bring to the attention of the judge in whose department it is filed any cause which the pleadings show at issue for more than three years. An order to show cause for failure of prosecution will be issued, and the Court may dismiss the case upon good cause.

## **RULE 23: WARRANTS FOR CONTEMPT AND TEMPORARY RESTRAINING ORDERS**

Two originals of any warrant for contempt, temporary restraining order or like order shall be presented to the judge. One shall be signed by the judge as the original order and retained as part of the Court file. The other shall be issued by the clerk and shall be used for the purpose of making service.

## **RULE 24: JUDGMENT ON WRITTEN INSTRUMENT**

In all cases in which a judgment is entered upon a written instrument, the instrument must be presented to the clerk at the time judgment is granted by the Court, the clerk shall note in ink across the face of the instrument the fact of the entry of judgment and its date. The clerk shall sign the entry, attach the official seal, and file the instrument. The instrument shall not be removed except by the order of the Court in writing setting forth the facts of such removal.

## **RULE 25: RULES OF DECORUM**

The District Court adopts the Fourth Judicial District Courtroom Decorum and Practice Guidelines attached hereby as [Exhibit "L"](#).



## **RULE 26: COURT SECURITY COMMITTEE**

There shall be a Court Security Committee whose members are:

- (1) All District Court Judges in Missoula County;
- (2) All justices of the peace in Missoula County;
- (3) A representative of the Missoula County Sheriff's Department;
- (4) A representative of the Missoula County Commissioners;
- (5) A representative of the Federation of Missoula County Employees;
- (6) A representative of the Western Montana Bar Association;
- (7) A representative of the general public designated by a majority vote of the Court Security Committee;
- (8) A representative of County Risk Management or insurance services.
- (9) A representative of the Montana Supreme Court Administrator's Office.

The Court Security Committee shall prepare a Court security policy, develop a Court security plan and provide continuous oversight of the implementation of the Court security plan.

## **RULE 27: FAMILY VIOLENCE COUNCIL**

A. There will be a Family Violence Council whose purposes shall be:

- (1) To coordinate the efforts of government agencies, the Courts, victim services, advocacy groups, and others involved in family violence issues.
- (2) To promote effective prevention, intervention and treatment techniques for persons involved in family violence.

B. The District Judges of the Fourth Judicial District shall issue appropriate orders to establish and carry out the purposes of the Family Violence Council.

## **RULE 28: LOCAL CITIZEN REVIEW BOARD**

Pursuant to §41-3-1001, et. seq., MCA, the Youth Court Judges of the Fourth Judicial District established a Pilot Local Citizen Review Board Program to review the case

of each child assigned to foster care by the Youth Court of this District.

The members of the Local Citizen Review Board shall have all powers set forth in the Local Citizen Review Board Pilot Act (§41-3-1001, et. seq., MCA) and specifically have the power to inspect and/or copy any records relating to the children and parents who are placed in foster care by the Youth Court of this District.

The members of the Local Citizen Review Board and their staff shall retain any information received from any source as confidential and will not disclose same except in reports to the Local Citizen Review Board, the Youth Court Judge and the parties in each foster care case.

Any Youth Court Judge of this District may refer a specific foster care placement to the Local Citizen Review Board for its review.

Members of the local Citizen Review Board shall serve at the pleasure of the Youth Court Judges of the Fourth Judicial District and are granted judicial immunity as agents of the Youth Court of the Fourth Judicial District.

## **RULE 29: MEDIA GUIDELINES**

Within the spirit of the First Amendment, media coverage of the trial of this cause shall be permitted under the following guidelines:

### **TELEVISION & RADIO**

No more than one camera will be permitted. It shall be located in a preselected position and operated by one cameraman. It will be the responsibility of each broadcast news representative to achieve an understanding as to who will function at any given time and as to how the coverage will be pooled. Permission for such coverage is on the condition that all representatives share in the pool arrangement. The television camera shall give no indication as to whether it is or is not operating.

Sufficient film and/or tape capacities shall be available to alleviate film or tape changes except during Court recess.

Microphones, if utilized, shall be limited to three: one near counsel table, one on the bench, and one near the witness chair. The television microphone shall also serve the radio media. All equipment shall be in place at least 15 minutes before each session.

Broadcast coverage outside the Courtroom shall be handled with care and discretion, but need not be pooled. THE JURY VOIR DIRE PROCESS SHALL NOT BE TELEVISED. Jurors faces shall not be filmed, photographed or drawn.

No witness or party who has expressed a prior objection shall be photographed, nor shall the testimony of such witness or party be broadcast or telecast.

### PRINT MEDIA

Representatives of the press, including still photographers, will be accommodated on a first-come basis, and position themselves in the spectator section. Photographers/reporters will not be permitted to roam the Courtroom. No flash cameras will be permitted and the cameras used shall operate with no distracting noise.

There will be absolutely no interviews of jurors, witnesses, parties or officers of the Court (including attorneys) either in or out of Court. This rule applies to all the media. There will be no available telephones on the Courtroom floor.

### DRESS CODE

Representatives of the media shall not be dressed in a manner which would set them apart from other spectators.

### RESTROOM FACILITIES

The restrooms on the Courtroom floor are reserved for jurors and officers of the Court.

### MEDIA COORDINATOR

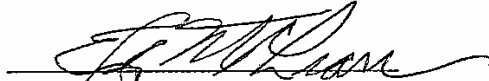
The Court will designate a Media Representative Coordinator in all media matters. Any questions and problems shall be presented to the Coordinator. All media representatives should register with the Coordinator prior to the trial.

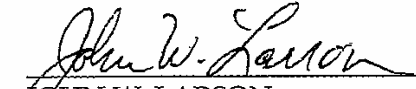
These guidelines are subject to such amendments as the media representative and the Court may from time to time deem necessary.

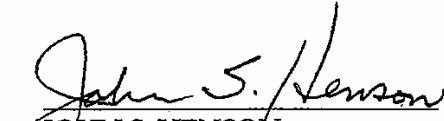
## **RULE 30: ELECTRONIC CERTIFICATION**

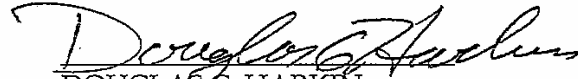
Court documents, including signatures, which relate to child support issues may be certified, compiled and copied onto a CD-ROM or laser disc. Each electronic entry bearing the notation "Fourth Judicial District Imaging Project" is a public record of the Fourth Judicial District and self-authenticated under Rule 902(4), Montana Rules of Evidence. The data is presumed to be correct. A hard copy of the original document will remain in the clerk's office in order to verify authentication.

DATED this 9th day of April, 2003.

  
ED MCLEAN  
District Judge, Dept. 1

  
JOHN W. LARSON  
District Judge, Dept. 3

  
JOHN S. HENSON  
District Judge, Dept. 2

  
DOUGLAS G. HARKIN  
District Judge, Dept. 4

**EXHIBIT "A"**

**[Name of Judge]**

Fourth Judicial District  
Missoula County Courthouse  
Missoula, MT 59802  
[Telephone No.]

**MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY**

,

Plaintiff(s),

vs.

,

Defendant(s).

Dept. No.

Cause No. \_\_\_\_\_

**RULE 16(b) SCHEDULING ORDER**

To enable the court to issue the Scheduling Order required by Rule 16(b), M.R.Civ.P., the attorney for the Plaintiff is directed to consult with the attorney for the opposing parties and any unrepresented party and thereafter file with the court the attached proposed Scheduling Order. If the proposed Scheduling Order is not filed with the court within 30 days of the date of this Order, the court will issue the attached Scheduling Order sua sponte.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
District Judge

**EXHIBIT "B"**

**[Name of Judge]**

Fourth Judicial District  
Missoula County Courthouse  
Missoula, MT 59802  
[Telephone No.]

**MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY**

',  Plaintiff(s),  vs.  ,  Defendant(s).		Dept. No. Cause No. _____  <b>SCHEDULING ORDER</b>
--	--	---

**Preliminary Note:** Discovery shall be completed and the Pretrial Order filed within seven (7) months of the date of this Order unless, for good cause shown, the court allows a longer period.

1. \_\_\_\_\_: All parties are to be joined and all amendments to the pleadings are to be filed.
2. \_\_\_\_\_: Names and addresses of Plaintiff's expert witnesses must be furnished to defense counsel on or before this date.
3. \_\_\_\_\_: Names and addresses of Defendant's expert witnesses must be furnished to Plaintiff's counsel on or before this date.
4. \_\_\_\_\_: All discovery in this matter shall be completed on this date.
5. \_\_\_\_\_: Exchange exhibits and final witness lists.

ESTABLISHING DEADLINES FOR THE IDENTIFICATION OF EXPERT WITNESSES, WITNESSES AND EXHIBITS DOES NOT SUPERSEDE THE REQUIREMENT OF ALL PARTIES TO FAIRLY AND ACCURATELY RESPOND TO OTHER DISCOVERY. THAT IS TO SAY, BY ESTABLISHING THESE DEADLINES, IT IS NOT INTENDED THAT THE PARTIES CANNOT IDENTIFY EXPERTS, WITNESSES, OR EXCHANGE EXHIBITS IN RESPONSE TO OTHER DISCOVERY BY CLAIMING THAT THE EXCHANGE OF INFORMATION IS NOT DUE UNTIL THE DEADLINES ESTABLISHED BY THIS ORDER. ALL DISCOVERY IS TO BE FAIRLY AND ACCURATELY RESPONDED TO

AND FAILURE TO DO SO MAY RESULT IN APPROPRIATE SANCTIONS.

6. \_\_\_\_\_: All pretrial motions, including motions in limine and motions for summary judgment, along with supporting briefs, shall be filed and served on opposing counsel on or before this date. Filing of answer briefs and reply briefs shall comply with the schedule provided by Rule 2(a) of the Uniform District Court Rules.

7. \_\_\_\_\_: Hearings on motions or submission of the motions on briefs shall be accomplished by this date. It shall be the responsibility of the moving party to advise the court either that the motions are submitted on briefs or to request a hearing in accordance with Rule 4 of the Local Rules of the Fourth Judicial District.

8. \_\_\_\_\_: The lawyers for all parties shall meet in person and discuss settlement in a lawyers resolution conference as provided by Rule 9 of the Local Rules.

9. No further pretrial conferences shall take place unless requested by counsel. If requested, it shall be the obligation of counsel to schedule the conference with the court.

10. There shall be no changes in this Scheduling Order absent court order upon showing of good cause. All motions for continuance shall be submitted in writing, supported by affidavit, and shall bear the signatures of the parties.

11. The Pretrial Order shall be prepared and submitted pursuant to Rule 6 of the Uniform District Court Rules.

\_\_\_\_\_:Plaintiff's Proposed Pretrial Order shall be served on Defendant.

\_\_\_\_\_:Defendant's Proposed Pretrial Order shall be served on Plaintiff.

\_\_\_\_\_:The final Pretrial Order is to be submitted to the court.

The parties shall advise the court in a cover letter submitted with the Pretrial Order of any special requests regarding the scheduling of the trial, including dates that counsel agree should not be devoted to trial of the case and the anticipated length of trial. The case will be set for trial only upon submission of the Settlement Master's report.

12. \_\_\_\_\_: A settlement conference shall be held, as provided in Rule 9 of the Local Rules, by this date. The Settlement Master shall submit a report to the court within 5 days of completion of the conference. Upon submission of the Settlement Master's report, the case will be set for trial. It is anticipated that cases will be set for trial 30 to 60 days after submission of the Pretrial Order.

Counsel shall advise the Settlement Master, and the Settlement Master shall include in the report to the court, the anticipated length of trial and the dates the parties or key witnesses are unavailable for trial. No case will be set for trial unless a master-supervised settlement conference has been held.

13. Proposed jury instructions (in a jury case) are to be exchanged and submitted 5 days after submission of the Settlement Master's report to the court.

14. The Original Proposed Findings of Fact/Conclusions of Law are to be filed with the Clerk of Court three days prior to trial along with a copy for the Judge. A Word 97 formatted disk containing the Findings/Conclusions should also be supplied to the Court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
District Judge



**EXHIBIT "C"**

**[Name of Judge]**

Fourth Judicial District  
Missoula County Courthouse  
Missoula, MT 59802  
[Telephone No.]

**MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY**

,

Plaintiff(s),

vs.

,

Defendant(s).

Dept. No.

Cause No. \_\_\_\_\_

**SCHEDULING ORDER**

(Issued as a result of the  
parties' failure to submit an  
agreed-upon Scheduling Order)

Pursuant to Rule 16(b), M.R.Civ.P., it is the duty of the court to issue a scheduling order within 120 days of the filing of the complaint. No proposed scheduling order having been filed by the parties, the court issues the following schedule that shall govern this case:

<b>DATE</b>	<b>EVENT</b>
One month from the date of this order	All parties must be joined and amendments to the pleadings filed.
Two months from the date of this order	Names of expert witnesses must be provided to opposing counsel.
Three months from the date of this order	Discovery closes and all exhibits and lists of witnesses shall be exchanged with opposing counsel. The lawyers shall meet in person in a resolution conference in accordance with Rule 9 of the Local Rules.
Four months from the date of this order	All motions must be filed and shall be briefed in accordance with the schedule provided in Rule 2(a) of the Uniform District Court Rules. There will be no hearings on motions unless scheduled in accordance with Rule 4 of the Local Rules.

Five months from the date of this order

The Pretrial Order shall be completed and filed with the court, prepared pursuant to Rule 5 of the Uniform District Court Rules. The parties shall advise the court in a cover letter submitted with the Pretrial Order of any special requests regarding scheduling of the trial.

Two months from the date of this order

Names of expert witnesses must be provided to opposing counsel. A settlement conference shall be held in accordance with Rule 9 of the Local Rules. The Settlement Master shall submit a report to the court within 5 days of completion of the conference. No case will proceed to trial unless a master-supervised settlement conference has been held. Proposed jury instructions (in a jury case) are to be exchanged and submitted 5 days after submission of the Settlement Master's report to the court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
District Judge

**EXHIBIT "D"**

**[Name of Judge]**

Fourth Judicial District  
Missoula County Courthouse  
Missoula, MT 59802  
[Telephone No.]

**MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY**

,

Plaintiff(s),

vs.

,

Defendant(s).

Dept. No.

Cause No. \_\_\_\_\_

**ORDER SETTING  
SETTLEMENT CONFERENCE**

IT IS HEREBY ORDERED that a master-supervised settlement conference be held in this case. The case will not be set for trial unless a master-supervised settlement conference is held in accordance with the scheduling order. The parties may utilize a Settlement Master from the list maintained by the Settlement Conference Coordinator (call Randy Cox's secretary at (406) 543-6646) or make other arrangements as they choose.

Counsel who will try the case and all parties must attend in person. Out-of-area corporations or insurance companies must have a representative present in person or via speaker phone, unless personal attendance is ordered by the court upon showing of good cause. All participants must have requisite settlement authority.

Each party shall submit to the Settlement Master at least three (3) business days before the conference a settlement statement of not more than five (5) pages. The statement shall set forth the nature of the case, the issues, the points of law, the strengths and weaknesses of each party's case and a history of settlement negotiation. Relevant additional material may be included if necessary or deemed appropriate.

Settlement statements will not be exchanged and will be returned to the parties at the close of the conference.

The purpose of the settlement conference is to permit a candid exchange of views concerning the settlement value of the case. All communications are confidential and will not be disclosed to anyone. Statements or communications of any kind occurring during the settlement conference may not be used by any party with regard to any aspect of the litigation. No person present at or participating in a settlement conference shall be subject to examination concerning any statements made by any participant or person attending the conference, including statements of the Settlement Master.

The parties shall be equally responsible for payment of the fees charged by the Settlement Master or shall agree among them the responsibility for payment of those fees.

Failure to abide by the procedures stated herein may cause the conference to be cancelled or rescheduled. The non-complying party may be assessed the costs and expenses incurred and other sanctions may be imposed in the discretion of the court.

DATED this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
District Judge

**EXHIBIT "E"**

[Name of Settlement Master]

[Address]

[Telephone No.]

**MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY**

,

Plaintiff(s),

vs.

,

Defendant(s).

Dept. No.

Cause No. \_\_\_\_\_

**SETTLEMENT  
CONFERENCE  
REPORT**

**The Settlement Master reports as follows:**

Date And Time Of Conference: \_\_\_\_\_

Plaintiff(s) Counsel: \_\_\_\_\_

Defendant(s) Counsel: \_\_\_\_\_

Time Spent and Hours Billed: \_\_\_\_\_

Result: (check one) \_\_\_\_\_ case settled \_\_\_\_\_ case not settled

Estimated Trial Time Recommended by Settlement Master: \_\_\_\_\_

Dates Not Available for Trial: \_\_\_\_\_

Master's Comments: (if any)

Special Trial Considerations: (if any)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
[Name of Settlement Master]

cc: Attorneys of Record

Randy J. Cox, Esq., (Settlement Conference Coordinator) Box 9199, Missoula, MT  
59807-9199

**EXHIBIT "F"**

[Name of Attorney]  
[Address]  
[Telephone No.]

**MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY**

,  
Plaintiff(s),  
vs.  
,  
Defendant(s).

Dept. No.  
Cause No. \_\_\_\_\_

**REQUEST FOR HEARING**

The (Plaintiff/Defendant) requests a hearing in the above-entitled cause now pending before this Court. The parties request that the hearing be set on the Law & Motion day of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.m.

The parties estimate the length of the hearing will be \_\_\_\_\_ and the parties intend to call \_\_\_\_\_ witnesses.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Requesting Attorney

**ORDER SETTING HEARING**

☐ Hearing is set as requested.

☐ Hearing is set for \_\_\_\_\_, \_\_\_\_\_, 200\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.m. by order of the Court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
District Judge

**EXHIBIT "G"****LAW & MOTION - DEPT. 1**

HONORABLE ED McLEAN PRESIDING

<b>Time</b>	<b>Mon.</b>	<b>Tues.</b>	<b>Wed.</b>	<b>Thursday</b>	<b>Friday</b>
<b>8:30</b>				<b>Non-Custody Adult Criminal Matters</b>	
<b>9:00</b>				<b>In Custody Criminal Matters</b>	
<b>10:30</b>				<b>Juvenile Matters, Sanities, Dept. of Family Services Matters</b>	
<b>1:30- 2:00</b>				<b>Uncontested Matters</b>	
<b>2:00- 5:00</b>				<b>Contested Matters (1/2 to 1 hour in length)</b>	

**EXHIBIT “H”****LAW & MOTION - DEPT. 2  
HONORABLE JOHN S. HENSON PRESIDING**

	<b>Mon</b>	<b>Tuesday</b>	<b>Wed</b>	<b>Thurs</b>	<b>Fri</b>
<b>9:00</b>		<b>All civil matters including uncontested default dissolutions, probates</b>			
<b>9:30 - Noon</b>		<b>Limited civil and criminal contested matters that will not exceed a total hearing time of 20 minutes with time split equally between the parties. All civil matters including uncontested default dissolutions, probates</b>			
<b>1:30</b>		<b>All County Attorney matters including uncontested criminal, Youth Court matters, guardianship, abuse/neglect, and sanity</b>			



**EXHIBIT "I"****LAW & MOTION - DEPT. 3  
HONORABLE JOHN W. LARSON PRESIDING**

	<b>MON</b>	<b>TUES</b>	<b>WED</b>	<b>THURS</b>	<b>FRI</b>
<b>8:45</b>				<b>In-Chambers Hearings</b>	
<b>9:00</b>				<b>Uncontested: Adoptions, Probates, Defaults, Dissolutions and Sanity Hearings</b>	
<b>9:30-10:30</b>				<b>Contested Civil Matters</b>	
<b>10:30-12:00</b>				<b>Contested Criminal Matters</b>	
<b>12:30-2:30</b>				<b>Youth Drug Court Staffing</b>	
<b>3:30-4:00</b>				<b>Youth Drug Court</b>	
<b>4:00</b>				<b>Youth Court Matters</b>	

**Counsel are directed to contact Dept. No. 3's Court Clerk and pre-arrange date and**

times on ALL contested criminal and civil matters. These shall be set at times available by scheduling clerk. (258-4780 x 3521 - leave message on voice mail if clerk is in not available)

**EXHIBIT “J”****LAW & MOTION - DEPT. 4  
HONORABLE DOUGLAS G. HARKIN PRESIDING**

	<b>Mon</b>	<b>Tues</b>	<b>Wed</b>	<b>Thurs</b>	<b>Fri</b>
<b>9:00</b>		<b>Criminal, Juvenile, Guardianship, Abuse/Neglect, Sanity matters</b>			
<b>1:30</b>		<b>All civil matters  Contested matters not to exceed a TOTAL hearing time of one hour, with the time split equally among the parties.</b>			

## **EXHIBIT “K”**

(REVISED 11/98)

### **MONTANA FOURTH JUDICIAL DISTRICT PARENTING GUIDELINES**

A powerful cause of stress, suffering, and maladjustment in children of dissolution is not simply the dissolution itself, but continuing conflict between the parents before, during and after the dissolution. To minimize conflict over the children, the parents should agree on a parenting arrangement that is most conducive to the children's having frequent and meaningful contact with both parents with as little conflict as possible. When parents' maturity, personality and communication skills are adequate, the ideal arrangement is reasonable parental contact upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed parenting agreement made by the parents to fit their particular needs and, more importantly, the needs of the children. If the parents are unable to agree, however, the following guidelines will help the parents in knowing what the presiding judge in the Fourth Judicial District believes are generally reasonable, unless special circumstances require a different arrangement. (See Paragraph 1.17 below.) Unless these guidelines are incorporated in a court order, they are not compulsory rules, only a general direction for parents. In the event parental contact becomes an issue in court, the judge reserves the right to set whatever parenting schedule best meets the needs of the children in that case.

#### **1. GENERAL RULES**

Parents should always avoid speaking negatively about the other and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other. Children should never be used by one parent to spy on the other. Parents should establish the basic rules of conduct and discipline to be observed by both parents and step-parents, so that the children do not receive mixed signals.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like, parents, need to avoid being critical of either parent in front of the

children. Parents should have their children maintain ties with both the maternal and paternal relatives. In Montana, grandparents have a legal right to reasonable contact with their grandchildren, if it is in their best interests. Usually the children will visit with the paternal relatives during times the children are with their father and with the maternal relatives during times they are with their mother.

Parents should be discouraged from making residential changes that are disruptive to a child's lifestyle, where the parents have been or are going through a contentious dissolution/parenting case.

When the parents are sharing in the parenting of a child, or at any time prior to the entry of a decree, and both parents reside in the Fourth Judicial District, the Court will consider a change of the child's residence to a location outside the Fourth Judicial District as having a

significant effect upon the child's relationship to family members and others and adjustment to his/her home, school, and community. The Court will also consider and balance the Constitutional right of the parent to travel. When the custodial parent moves out of the Fourth Judicial District, the child's residence shall not be moved outside the Fourth Judicial District without an order from the Court after hearing or upon written stipulation of the parties that is approved by the Court. The Court will consider keeping the child in the Fourth Judicial District as a positive development for the child based upon legitimate, case-specific circumstances which must be presented to the Court at a hearing with all parties present.

In cases where both parents resided in the same community at the time of separation, and then one parent left the area, thus changing the pattern of parental contact, the court will consider imposing the travel costs for the children necessary to facilitate future contact, on the parent who moved. The court will also consider other factors, however, such as the economic circumstances of the parents and the reasons prompting the move.

**1.1 Parental Communication.** Parents should always keep each other advised of their home and work addresses and telephone numbers. As far as possible, all communication concerning the children shall be conducted between the parents themselves in person, or by telephone at their residences and not at their places of employment. Consistent with our emphasis on improved parental communication, it is suggested that parents communicate well in advance about moves that will impact schooling or visitation.

**1.2 Grade Reports and Medical Information.** Parents shall provide one another with grade reports and notices from school as they are received. Parents shall communicate independently with the school and with the children's doctors and other professionals regarding the children. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children.

Each parent shall notify the other of all school or other events (like Church or Scouts) involving parental participation. If the child is taking medications, each parent shall provide or be provided with a sufficient amount of medication and the appropriate instructions.

**1.3 Clothing.** Parents shall send an appropriate supply of children's clothing with them, which shall be returned clean (when reasonably possible), with the children. Parents shall advise, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.

**1.4 Withholding Support or Parental Contact.** Neither parental contact nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and parental contact, neither of which is dependent upon the other. In other words, no support does not mean no parental contact and no parental contact does not mean no support. If there is a violation of either a parenting or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.

**1.5 Adjustments in Parental Contact Schedule.** Although there is or there may be a specific schedule, the parties are expected to fairly modify parental contact when family necessities, illnesses or commitments reasonably so require. The requesting parent shall act in good faith and give as much notice as circumstances permit.

**1.6 Parent's Vacation.** Unless otherwise specified in a court order or agreed by the parties, each parent is entitled to a reasonable period of vacation time, usually equal to that of the other parent. In the instance of extended vacation periods, i.e., summer vacations, the parents shall communicate in writing on or before May 1 of each year their choices of vacation periods.

**1.7 Insurance Forms.** The parent who has medical insurance coverage on the children shall

supply, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to a doctor, dentist or other provider not so approved or qualified should pay the additional cost thus created. However, when there is a change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parties to what is more important: allowing the child to remain with the original provider or the economic consequences of changing. When there is an obligation to pay medical expenses, the parent responsible therefore shall be promptly furnished with the bill by the other. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was paid.

**1.8 Child Support Abatement.** Child support, once ordered shall not abate unless a court order otherwise provides. The only way child support can be changed is by Court Order. Parents cannot agree to a change in support without Court approval. The purchase of clothing, food or other necessities do not constitute a deduction from Court-ordered child support.

**1.9 Missed Parental Contact.** When scheduled parental contact cannot occur due to events beyond either parents' control, such as illness of the child or of the parent exercising contact with the child, a mutually agreeable substituted parental contact date shall be arranged, as quickly as possible. Each parent shall timely advise the other when parental contact cannot be exercised. Missed parental contact should not be unreasonably accumulated.

**1.10 Parental Contact a Shared Experience.**

Because it is intended that parental contact be a shared experience between siblings and, unless these Guidelines, a court order, or circumstances, such as age, illness, or the particular event, suggest otherwise, all of the children shall participate in any particular contact.

**1.11 Telephone Communication.** Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. Parents may call the children at reasonable hours during those periods the children are with the other parent. The children may, of course, call either parent, though at reasonable hours, frequencies and at the cost of the parent called if it is a long distance call. During long vacations the parent with whom the child is on vacation is only required to make the child available to telephone calls every five days. At all other times the parent the child is with shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available.

**1.12 Mail Contact.** Parents have an unrestricted right to send cards, letters and packages to their children. The children also have the same right with their parents. Neither parent should interfere with this right.

**1.13 Privacy of Residence.** A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence. The parent dropping the children off should not leave until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is their own, and the children's time with that parent is equally private.

TERMINOLOGY IN THE FOLLOWING SECTIONS INCLUDES PRIMARY CARETAKER, DESIGNATING THAT PERSON WITH WHOM THE CHILD SPENDS THE GREATER PROPORTION OF TIME AND SECONDARY CARETAKER, DESIGNATING THAT PERSON WITH WHOM THE CHILD SPENDS A LESSER AMOUNT OF TIME.

**1.14 Children Under Age Five.** Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary caretaker who provides a sense of security, nurturing and predictability. Generally overnight visits for infants and toddlers are not recommended unless the secondary caretaker is very closely attached to the child and is able to provide primary care. Older preschool age children (three to five) are able to tolerate limited separations from the primary caretaker. The following guidelines for children under age five are designed to take into account the child's developmental milestones as a basis for visitation. Since children mature at different rates these may need to be adjusted to fit the child's unique circumstances. These guidelines may not apply to those instances where the parents are truly sharing equally all the caretaking responsibilities for the child and the child is equally attached to both parents. Yet in the majority of situations where there is a primary caretaker and a secondary caretaker who has maintained a continuous relationship with the child but has not shared equally in child caretaking the following guidelines should generally apply:

**A. Infants Birth to Six Months.** Children need to have affectionate bonds with both parents. Overnight visits are not recommended. Time with the secondary caretaker should be spent where the child lives, as going back and forth between homes causes tension for the child. The infant's eating and sleeping routine should not be interrupted. Alternate parenting plans: (1) Three two-hour visits per week, with one weekend day for six hours; or (2) Three two-hour visits per week, with one overnight on a weekend for no longer than a twelve hour

period, if the child is not breast feeding and the secondary caretaker is capable of providing primary care.

**B. Infants Six to Eighteen Months.** Predictability and routine are important at this age. Overnight visits are still not recommended, but can be considered if the infant is going with older brothers or sisters the infant knows and trusts. Alternate parenting plans: (1) Three, three-hour visits per week with one weekend day for six hours; or (2) Same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the secondary caretaker is capable of providing primary care; or (3) Child spends time in alternate homes, but spends significantly more time at one of them and no more than two twelve-hour overnights per week at the other. This arrangement should be considered only for mature, adaptable children and very cooperative parents.

**C. Toddlers Eighteen to Thirty-Six Months.** Children start to learn that things and people continue to exist even when the child can't see them. A common fear is that the primary caretaker will disappear and they may cry when a parent leaves them. Longer periods with the secondary caretaker can begin. Short visits (2-4 hours) away from the child's home are permissible, however, the child needs to take favorite things with him/her (blanket or stuffed animal or pacifier, etc.). At this age children do not understand time, or days of the week, or that they will see mother or father "tomorrow" or in "two days" or on "Sunday." When away from the primary caretaker they may feel anger and a powerful sense of loss and often do not understand why mother or father isn't there. Alternate parenting plans: (1) The secondary caretaker has the child up to three times per week for a few hours on each visit, on a predictable schedule; or (2) Same as (1) but with one overnight per week; or (3) Child spends time in alternate homes, but with more time in one than the other with two or three overnights spaced regularly throughout the week. This requires an adaptable child and cooperative parents.

**D. Preschoolers Three to Five Years Old.** The most important thing is predictability. Children can usually tolerate two days away from the primary caretaker and they should see the secondary caretaker at least once each week. Children still have a strong need to take familiar things with them. Alternate parenting plans: (1) One overnight visit (i.e. Saturday morning to Sunday evening) on alternate weekends and one midweek visit with the child returning to the primary caretaker's home at least one-half hour before bedtime; or (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other home. In addition, for preschoolers, a vacation of no longer than two weeks with the secondary caretaker

#### **1.15 Pre-Teens and Teenagers.**

**A. Six to Twelve Years.** School age children need to see the secondary caretaker one or more times each week, and seem happiest with several visits each week. Children this age will want their own things at each home, but will wish to take some things back and forth with them for their own security. At about age seven, a child can cope better with longer periods of parental contact during summer months because they understand about time and can count and can understand what a week or month is.

**B. Thirteen Years and Up.** Friends and social activities are very important at this age. A decrease in the number of parental exchanges may be helpful. Teenagers have no need for long visits and once or twice a week for a few hours may be sufficient. One of the things teenagers need to do is learn to "separate" from parents and to achieve autonomy. They still need predictability and routine for their visits. Teens should be consulted in deciding on time-sharing plans. Teenagers tend to want one home base.

**1.16. Children in Day Care.** In families where a child has been in day care prior to the parental separation, the child may be able to tolerate flexible visits earlier because the child is more

accustomed to separations from both parents. The secondary caretaker who exercises contact of a child under age five should not during the period of parental contact place the child with a baby-sitter or day care provider. If the secondary caretaker cannot be with the child personally, the child should be returned to the primary caretaker. Visiting for short periods with relatives may be appropriate, if the relatives are not merely serving as baby-sitters.

**1.17. Parental Contact with Adolescents.** Within reason the parents should honestly and fairly consider their teenager's wishes regarding parental contact. Neither parent should attempt to pressure their teenager to make a parental contact decision adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

**1.18. Day Care Providers.** When parents reside in the same community, they should use the same day care provider. To the extent possible the parents should rely on each other to care for the children when the other parent is unavailable.

#### **1.19. Special Circumstances.**

**A. Child Abuse.** When child abuse has been established and a continuing danger is shown to exist, all parental contact with the perpetrator of said abuse should cease or only be allowed under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases.

**B. Spouse Abuse.** Witnessing spouse abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse, may be capable of doing so with children as well. Depending on the nature of the spouse abuse and when it occurred, the court may require an abusive spouse to successfully complete appropriate counseling before being permitted unsupervised parental contact.

**C. Substance Abuse.** Parental contact should not occur when a parent is abusing



drugs/alcohol.

**D. Long Interruption of Contact.** In those situations where a parent has not had an ongoing relationship for an extended period, parental contact should begin with brief visits and a very gradual transition to the parental contact in these guidelines.

**E. Kidnapping/Threats.** Parents who have kidnapped or hidden the children or threatened to do so should have no parental contact or only supervised parental contact.

**F. Breast Feeding Child.** Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has occurred without forcing, a nursing infant should have parental contact of only a few hours each. A parent should not use breast feeding beyond the normal weaning age as a means to deprive the other parent of parental contact.

**G. A Parent's New Relationship.** Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parent's separation and dissolution.

**H. Religious Holidays and Native American Ceremonies.** Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and cooperate with each other on parental contact to achieve these goals. These goals should not be used to deprive a parent of parental contact.

**I. Other.** The Court may limit or deny parental contact to parents who show neglectful, impulsive, immoral, criminal, assaultive or risk-taking behavior with or in the presence of the children.

## **2. PARENTAL CONTACT WITH CHILDREN OVER AGE FIVE WHEN THERE IS SOLE**

### **PARENTING OR SHARED PARENTING AND PARENTS RESIDE NO MORE THAN 200 MILES APART**

**2.1 Weekends.** Alternate weekends from Friday at 5:30 P.M. to Sunday at 7 P.M.; the starting and ending times may change to fit the parents' schedules. Or an equivalent period of time if the secondary caretaker is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits of two to three hours. All transportation for the midweek visits are the responsibility of the secondary caretaker.

**2.2 Mother's Day - Father's Day.** The alternate weekends will be shifted, exchanged or arranged so that the children are with their mother each Mother's Day weekend and with their father each Father's Day weekend. Conflicts between these special weekends and regular parental contact shall be resolved pursuant to Paragraph 1.9.

**2.3 Extended Parental Contact.** One-half of the school summer vacation. At the option of the secondary caretaker, the time may be consecutive or it may be split into two blocks of time. If the child goes to summer school and it is impossible for the secondary caretaker to schedule this contact time other than during summer school, that parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in the secondary caretaker's community.

**2.4 Winter (Christmas) Vacation.** One-half the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the secondary caretaker shall have the first half in even-number years. If the parents live in the same community, in those years when Christmas does not fall in a parent's week, that parent shall have from Noon to 9 P.M. on Christmas Day. For toddlers and preschool age

children, when the parents live in the same community, the parents should alternate each year Christmas Eve and Christmas Day so that the children spend equal time with each parent during this holiday period.

**2.5 Holidays.** Parents shall alternate the following holiday weekends: Easter, Memorial Day, the 4th of July, Labor Day and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day Weekends will begin on Friday and end on Monday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; while the 4th of July, when it does not fall on a weekend, shall include the weekend closest to the 4th. Holiday weekends begin at 5:30 P.M. and end at 7 P.M. on the appropriate days.

**2.6. Children's Birthdays.** Like the holidays, a child's birthday shall be alternated annually between the parents. If the birthday falls on a weekend, it shall extend to the full weekend, and any resulting conflict with regular visitation shall be resolved pursuant to Paragraph 1.9. If the birthday falls on a weekday, it shall be celebrated from 3 P.M. to 9 P.M. (or so much of that period as the secondary caretaker elects to use).

**2.7. Parents' Birthdays.** The children should spend the day with the parent who is celebrating their birthday, unless it interferes with a secondary caretaker's extended visitation during vacation.

**2.8. Conflicts Between Regular and Holiday Weekends.** When there is a conflict between a holiday weekend and the regular weekend visitation, the holiday takes precedence. Thus, if the secondary caretaker misses a regular weekend because it is the primary caretaker's holiday, the regular alternating visitation schedule will resume following the holiday. If the secondary caretaker receives two consecutive weekends because of a holiday, regular alternating visitation will resume the following weekend with the primary caretaker. The parents should agree to make up missed

weekends due to holiday conflicts.

**2.9. Parental Contact Before and During Vacations.** There will be no parental contact the weekend(s) before the beginning of the secondary caretaker's summer vacation visitation period(s), regardless of whose weekend it may be. Similarly, that parent's alternating weekend visitation(s) shall resume the second weekend after each period of summer vacation that year. Weekend visitation "missed" during the summer vacation period will not be "made up." During any extended summer visitation of more than three consecutive weeks, it will be the secondary caretaker's duty to arrange, for a time mutually convenient, a 48-hour continuous period of visitation for the primary caretaker unless impracticable because of distance.

**2.10. Notice of Canceled Parental Contact.** Whenever possible, the secondary caretaker shall give a minimum of three days' notice of intent not to exercise all or part of the scheduled parental contact. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the reason therefor, shall be given. The primary caretaker shall give the same type of notice when events beyond their control make the cancellation or modification of scheduled parental contact necessary. If the primary caretaker cancels or modifies a visit because the child has a schedule conflict, the secondary caretaker should be given the opportunity to take the child to the scheduled event or appointment.

**2.10. Pick Up and Return of Children.** When the parents live in the same community, the responsibility of picking up and returning the children should be shared. Usually the secondary caretaker will pick up and the primary caretaker will return the children to that parent's residence. The person picking up or returning the children during times of parental contact has an obligation to be punctual: to arrive at the agreed time, not substantially earlier or later. Repeated, unjustified, violations of this provision may subject the offender to court sanctions.

**2.11. Additional Parental Contact.** Parental contact should be liberal and flexible. For many parents these guidelines should be considered as only a minimum direction for interaction with the children. These guidelines are not meant to foreclose the parents from agreeing to such additional parental contact as they find reasonable at any given time.

### **3.PARENTAL CONTACT OF CHILDREN OVER AGE FIVE WHEN SOLE PARENTING OR SHARED PARENTING AND PARENTS RESIDE MORE THAN 200 MILES APART**

**3.1 Extended Parental Contact.** All but three weeks of the school summer vacation period and, on an alternating basis, the school Winter (Christmas) vacation and Spring Break.

**3.2 Priority of Summer Break.** Summer break with the secondary caretaker takes precedence over summer activities (such as Little League) when the parental contact cannot be reasonably scheduled around such events. Even so, the conscientious secondary caretaker will often be able to enroll the child in a similar activity.

**3.3 Notice.** At least 60 days notice should be given of the date for commencing extended parental contact, so that the most efficient means of transportation may be obtained and the parties and the children may arrange their schedules. Failure to give the precise number of days notice does not entitle the primary caretaker the right to deny visitation.

**3.4 Additional Parental Contact.** Where distance and finances permit, additional parental contact, such as for holiday weekends or special events, are encouraged. When the secondary caretaker is in the area where the child resides, or the child is in the area where the secondary caretaker resides, liberal visitation shall be allowed and because the secondary caretaker does not get regular visitation, the child can miss some school during the visits so long as it does not substantially impair the child's scholastic progress.

## **EXHIBIT “L”**

### **FOURTH JUDICIAL DISTRICT COURTROOM DECORUM AND PRACTICE GUIDELINES**

#### **Preface**

The pursuit of justice is a serious undertaking and conduct during the litigation process, both within and outside the courtroom, must at all times satisfy the appearance as well as the reality of fairness and equal treatment. Dignity, order, and decorum are indispensable to the proper administration of justice.

A trial is an adversary proceeding, and lawyers must advocate for their clients' positions. However, conduct that may be characterized as discriminatory, abusive, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay and often to deny justice.

Attorneys are privileged to participate in the administration of justice in a unique way, and are responsible to their own consciences, to their clients, to one another, and to the public to conduct themselves in a manner which will facilitate, and never detract from, the administration of justice.

A trial is a truth-seeking process designed to resolve human and societal problems in a rational and efficient manner. A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. A judge's conduct should be characterized at all times by courtesy, patience, and fairness toward all participants. The courts belong to the people of this state. The guidelines are intended to facilitate access to the courts for the fair resolution of disputes, and should never be applied to deny access.

#### **Application**

The purpose of these guidelines is to provide lawyers, judges, and parties with a reasonable standard of conduct in judicial proceedings. However, these guidelines are not intended to homogenize conduct or remove individuality from the courtroom. To facilitate professional growth and foster voluntary compliance with these guidelines, the Judges of the Fourth Judicial District periodically review the guidelines. Comments are considered by the Judges and changes are incorporated as needed.

All participants in judicial proceedings should voluntarily adhere to these guidelines. The Judges of the Fourth Judicial District reserve the right to impose contempt of court or Rule 11 sanctions for violations of these guidelines. Nothing in these guidelines supersedes or detracts from existing codes or rules of conduct or discipline or alters existing standards by which lawyer misconduct may be determined.

#### **COURTROOM DECORUM**

## **I. General Courtroom Conduct**

- A. Always be prompt.
- B. Stand when the judge enters or leaves the courtroom.
- C. Do not make personal attacks on opposing counsel. Argument or motions on issues not fully briefed or noticed for hearing as well as allegations of improper or unethical conduct by an attorney or party which are being raised for the first time during a trial or court hearing are generally considered efforts calculated to disrupt or distract from the issues before the Court and will be cause for sanctions.
- D. Do not interrupt the Court or opposing counsel. Wait your turn.
- E. Enhancing courtroom decorum is a cooperative venture among bench and bar. It is appropriate to call to the attention of opposing counsel any perceived violations of these guidelines out of the presence of the jury.
- F. After the Court has ruled, ask the Court's permission before arguing further.
- G. Advise clients and witnesses of the formalities of the Court, the appropriate guidelines, and any rulings on motions in limine. Encourage their cooperation. This applies both to attorneys and to pro se parties.
- H. If there is a live microphone at counsel table, remember not to confer with others or rustle papers near the microphone.
- I. Courtrooms equipped for videotaped reporting may require special precautions, such as remaining near a microphone.
- J. Counsel and the parties are expected to dress in a manner that reflects the seriousness of judicial

proceedings and demonstrates an awareness of the Court as a respected institution of the American system of democracy. Coat and tie are suggested for male attorneys. Corresponding attire is appropriate for female attorneys.

- K. Treat everyone in the courtroom with fairness, consideration and respect. Refrain from conduct that discriminates on the basis of race, color, national origin, religion, creed, sex, age, disability, sexual orientation, or marital status.

## **II. General Trial Conduct**

- A. Offers of and requests for stipulations are appropriate to facilitate the presentation of a case, but should not be employed to communicate to the jury a party's willingness or unwillingness to stipulate.
- B. During trial, maintain appropriate respect for witnesses, jurors, and opposing counsel, avoiding informality. Address adults by their titles or surnames unless permission has been given to use first names. Avoid referring to adults by biased and demeaning expressions or labels such as "girl," "gal," or "boy." Address jurors individually or by surname only during voir dire.
- C. Treat jurors with respect and dignity, avoiding fawning, flattery, or pretended solicitude. Suggestions regarding the comfort or convenience of jurors should be made to the Court out of the jury's hearing.
- D. During the opening statement and argument of opposing counsel, never inappropriately divert the attention of the Court or the jury.
- E. Avoid expressing an opinion to the

jury about the testimony of a witness, a ruling of the Court, or argument of counsel through exaggerated facial expressions or other contrived conduct.

- F. When practical, give the Court advance notice of any legal issue which is likely to be complex, difficult, and which you expect to require argument.
- G. Do not argue the case in the opening statement.
- H. Counsel should not express to the jury personal knowledge or personal opinions about the evidence.
- I. Address your remarks to the Court, not to opposing counsel except when extending necessary courtesies, e.g., thank you.
- L. Only attorneys, parties, court personnel, and witnesses, when called to the stand, are permitted within the bar of the courtroom, unless otherwise allowed by the Court.

### **III. Examination of Witnesses**

- A. When examining a witness, avoid undue repetition of the witness's answer.
- B. Make objections for evidentiary reasons without delivering a speech or guiding a witness. Recapitulate testimony only as needed to put an objection in context.
- C. If a witness was on the stand at a recess or adjournment, have the witness ready to proceed when court is resumed.
- D. Attempt to anticipate witness scheduling problems and discuss them with opposing counsel and the Court. Try to schedule witnesses in advance of trial.

### **IV. Exhibits and Documents**

- A. Premark exhibits with the clerk for identification prior to trial where appropriate. Hand all unmarked exhibits to the clerk for marking before using them in trial.
- B. If practical, have photocopies of an exhibit for the Court, opposing counsel, and the witness. Avoid illegible copies if possible.
- C. Return all exhibits to the clerk at each adjournment.
- D. Whenever referring to an exhibit, mention the exhibit number.
- E. After an exhibit has been admitted, mark on it only with the Court's permission. Avoid unnecessary markings. When referring to locations or features on exhibits such as maps or diagrams, indicate the locations by appropriate markings if they are not readily apparent from the documents.
- F. Give to the clerk all papers intended for the Court.
- G. Show the proposed exhibit to opposing counsel prior to offering the exhibit in evidence.

### **V. Scheduling**

- A. When practical, consult opposing counsel before asking for a hearing and scheduling a discovery appearance in an effort to avoid scheduling conflicts. Assert a scheduling conflict only if the requested time is not available, not to obtain any unfair advantage.
- B. If opposing counsel fails to promptly accept or reject a time offered for hearing or discovery appearance, raises an unreasonable number of conflicts, or consistently fails to comply with this standard, agreement is not required.

- C. Where time associated with scheduling agreements could cause damage or harm to a client's case, then a lawyer is justified in asking for a hearing or scheduling a discovery appearance without first consulting with opposing counsel.
- D. Give notice of cancellation of appearances and hearings to all involved at the earliest possible time.

## **VI. Preferences of Individual Judges**

Counsel are advised to determine the preferences of individual judges with respect to movement within the courtroom. Following are some examples of individual preferences.

- A. Stand when addressing the Court and when making objections.
- B. Stand during opening statements and closing argument.
- C. Approach the bench only with permission.
- D. Maintain an appropriate distance from the witness and the jury.
- E. Always address the judge as "Your Honor."

## **VII. Discovery**

- A. Make reasonable efforts to conduct all discovery by agreement. Consider agreeing to an early voluntary exchange of information.
  - 1. Comply with all reasonable discovery requests in a timely
  - 2. Stipulate to facts unless there is a genuine dispute.
- B. Conduct yourself in a professional manner and treat other lawyers, the opposing party, and all involved with courtesy and civility at all times. Clients should be counseled that civility and courtesy are required.
- C. Be punctual in fulfilling all

professional commitments and in communicating with the Court and other lawyers.

- D. Concentrate discovery responses on matters of substance and content, avoiding quarrels over form or style.
- E. Clearly identify for other counsel or parties all changes made in documents submitted for review.
- F. Fully respond to discovery, unless making a specific and clear objection warranted by existing law or a reasonable extension thereof. Do not produce documents in a manner designed to hide or obscure the existence of particular documents.

## **VIII. Depositions**

- A. Advise clients regarding appropriate behavior, attire and other matters involved with depositions and other proceedings.
- B. Take depositions only when actually needed to ascertain facts or information or to perpetuate testimony.
- C. Make only good-faith objections to discovery, and avoid objections solely for the purpose of withholding or delaying the disclosure of relevant information.

## **IX. Court Staff**

- A. Counsel are to fully cooperate with all court staff including appointed guardians, settlement masters, and standing masters by promptly returning phone calls and keeping scheduled appointments.

EXHIBIT "M"

Fourth Judicial District  
200 West Broadway  
Missoula County Courthouse  
Missoula, MT 59802

FILED NOV 12 2002

SHIRLEY E. FAUST, CLERK  
By *Shirley E. Faust*

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

IN THE MATTER OF  
VITAL STATISTICS REPORTING FORM

ORDER SB-02-12

Pursuant to Section 40-5-908, MCA,

40-5-908. Registration procedures. (1) In a court case, before a decree, judgment, or order may be docketed, the parties to the action or their attorneys shall prepare, on a form prescribed by the department, the abstract of a support order required under 40-5-907(3) and deliver it to the clerk of court...

Therefore,

IT IS HEREBY ORDERED that in all dissolution/custody proceedings where children are involved, or any case where child support is an issue (including modification of child support), the case SHALL NOT PROCEED TO FINAL HEARING until the attached Montana State Case Registry and Vital Statistics Reporting Form has been filled out by BOTH parties and submitted to the Clerk of Court for filing.

The Clerk of Court shall provide a copy of this Order and the attached form to Petitioner, if pro se, or Petitioner's counsel upon filing of a dissolution/custody proceeding or any case where child support is an issue.

DATED this 12th day of November, 2002.

*Ed McLean*  
ED McLEAN  
District Judge, Dept. 1

*John S. Henson*  
JOHN S. HENSON  
District Judge, Dept. 2

*John W. Larson*  
JOHN W. LARSON  
District Judge, Dept. 3

*Douglas G. Harkin*  
DOUGLAS G. HARKIN  
District Judge, Dept. 4

243 1183



**EXHIBIT "N"**

Fourth Judicial District  
Missoula County Courthouse  
Missoula, Montana 59802

**◀MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY▶**

IN RE THE MARRIAGE OF

,

Petitioner,  
and

,

Respondent.

DEPT NO. \_\_\_\_

CAUSE NO. \_\_\_\_\_

**SUMMONS AND TEMPORARY  
RESTRAINING ORDER**

**PARENTING PLAN  
ORIENTATION ORDER**

**THE STATE OF MONTANA SENDS GREETINGS  
TO THE ABOVE-NAMED RESPONDENT:**

YOU, THE RESPONDENT, ARE HEREBY SUMMONED to answer the Petition in this action which is filed in the office of the Clerk of the above-named Court, a copy of which is served upon you with this Summons, and to file your answer and serve a copy of your answer upon the Petitioner within twenty days after the service of this Summons, exclusive of the day of service. If you fail to appear or answer, judgment will be taken against you by default for the relief demanded in the Petition.

**TO PETITIONER AND RESPONDENT:**

Pursuant to Mont. Code Ann. 40-4-121(3), the Petitioner and Respondent are hereby restrained from transferring, encumbering, pawning, pledging, hiding, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the

necessities of life. Each party must notify the other of any proposed extraordinary expenditures at least five business days before incurring the expenditures and must account to the court for all extraordinary expenditures made after service of the summons.

This restraining order does not prevent either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

Petitioner and Respondent are further restrained from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered.

This temporary restraining order shall continue until another order of the Court is issued either amending or vacating this temporary restraining order.

**VIOLATION OF THIS TEMPORARY RESTRAINING ORDER IS  
A CRIMINAL OFFENSE UNDER M.C.A. §§ 45-5-220 OR 45-5-626.**

### **PARENTING PLAN ORIENTATION ORDER**

Pursuant to Family Law Section 40-4-226 MCA, the Judges of the Fourth Judicial District have determined that it is in the best interest of the child(ren) that the parties involved in the dissolution of marriage or parenting plan amendment (including child support or other actions) attend a PARENTING PLAN ORIENTATION program. This orientation, a free service of the Court is mandatory for both parents. Information pertaining to your Orientation is as follows:

Date: \_\_\_\_\_, 2003 (To be filled out by the Clerk)  
Time: 4:30 p.m. (Orientation will conclude by 6:00 p.m.)  
Location: Courtroom # 3  
Third Floor County Courthouse  
200 W. Broadway, Missoula Montana

A District Court Judge will preside over this Orientation. Failure to attend this orientation could result in the delay of entry of your Decree of Dissolution-

Dated this \_\_\_\_ day of \_\_\_\_\_, 2003.

(COURT SEAL)

\_\_\_\_\_  
Clerk of the District Court  
By: \_\_\_\_\_